

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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THE FASHION EXCHANGE LLC,

Plaintiff,

v.

HYBRID PROMOTIONS, LLC, JEFF CALDWELL,  
JARROD DOGAN, GAVIN DOGAN,

Defendants/Counterclaimants,

and

NATIONAL STORES, INC.,  
HOT TOPIC, INC.,  
PACIFIC SUNWEAR OF CALIFORNIA, INC.,  
ROSS STORES, INC., TWEEN BRANDS, INC.,  
THE TJX COMPANIES, INC.,  
THE WET SEAL RETAIL, INC.,  
SPENCER GIFTS LLC,  
OLD NAVY, LLC, RUE21, INC.,  
J.C. PENNEY CORPORATION, INC.,  
BJ'S WHOLESALE CLUB, INC.,  
BOSCOV'S DEPARTMENT STORE, LLC,  
WAL-MART STORES, INC.,  
KOHL'S DEPARTMENT STORES, INC.  
MACY'S RETAIL HOLDINGS, INC.,  
MACYS.COM, INC.,  
SHOPKO STORES OPERATING CO., LLC,  
FAMILY DOLLAR SERVICES, INC.,  
THE CATO CORPORATION,  
BELK, INC., DILLARD'S, INC.,  
NORDSTROM, INC.,  
BEALL'S DEPARTMENT STORES, INC.,  
SEARS BRANDS, LLC,  
MARSHALLS OF MA, INC., BOB'S STORES, LLC,  
DOLLAR GENERAL CORPORATION,  
TARGET CORPORATION,  
URBAN OUTFITTERS, INC.,

Defendants.  
-----X

Civil Action No. 14-CV-1254 (SHS)

**PLAINTIFF'S MEMORANDUM  
OF LAW IN OPPOSITION TO  
DEFENDANTS' MOTION  
FOR SUMMARY JUDGMENT**

COMES NOW Plaintiff The Fashion Exchange LLC (“Plaintiff”), by and through its attorneys, Zarin & Associates P.C., with this memorandum of law in opposition to Defendants Hybrid Promotions, LLC (“Hybrid Promotions”), Jeff Caldwell, Jarrod Dogan (“Dogan”) and Gavin Dogan (collectively “Defendants”) motion for summary judgment.

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## I. Preliminary Statement

In this action, brought under the Lanham Act, Plaintiff has asserted claims against Defendants and numerous retailers which have sold Defendants' goods ("Retailer Defendants") for: (1) a declaration that it has ownership rights in its HYBRID and HYBRID & COMPANY trademarks (First Cause of Action); (2) trademark infringement pursuant to 15 U.S.C. §1114 (Second Cause of Action); (3) unfair competition pursuant to 15 U.S.C. §1125(a) (Third Cause of Action); and (4) unfair competition pursuant to New York common law (Fourth Cause of Action). (D.E. 134) In defense against these claims, both Defendants and Retailer Defendants have raised the affirmative defenses, *inter alia*: (1) laches (Second Affirmative Defense); and (2) lack of valid and enforceable trademark rights (Fifth Affirmative Defense). (D.E. 135, p. 15; D.E. 140, pp. 16-17) Defendants alone have also asserted the affirmative defense of superior trademark rights (Seventh Affirmative Defense). (D.E. 135, p. 16) Defendants have moved for summary judgment on these affirmative defenses.<sup>1</sup> For the following reasons, however, Defendants' motion should be denied.

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<sup>1</sup> Although Retailer Defendants are not a party to this motion, Defendants contend that *their* laches defense applies to Retailer Defendants also.